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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

KEVIN ANGELL AN INDIVIDUAL;
CARRIE ANGELL, AN INDIVIDUAL;
DAVID BEAUMONT, AN INDIVIDUAL;
AND KARRI BEAUMONT, AN
INDIVIDUAL,

Plaintiffs,

vs.

MARK WELS, AS AN INDIVIDUAL AND
AS A TRUSTEE; KATIE WELS, AS AN
INDIVIDUAL, AND AS A TRUSTEE;
ALL PERSONS UNKNOWN, CLAIMING
ANY LEGAL OR EQUITABLE RIGHT,
TITLE, ESTATE LIEN, OR INTEREST IN
THE PROPERTY DESCRIBED IN THE
CROSS-COMPLAINT ADVERSE TO
CROSS-COMPLAINANTS' TITLE, OR
ANY CLOUD ON CROSS-
COMPLAINANTS' TITLE THERETO;
AND DOES 1-50,

Defendants.

AND RELATED CROSS ACTIONS

Case No.: CV 080533
STATEMENT OF DECISION

1 **INTRODUCTION AND STATEMENT OF THE CASE**

2 This is a dispute between neighbors over the use of a roadway called Christine
3 Loomis Drive on Tar Springs Ranch in a rural area east of Arroyo Grande. Containing
4 45 parcels on several hundred acres of hilly terrain, Tar Springs Ranch has belonged to
5 the Loomis family since approximately 1942. In 1992 certain parcels on the Ranch
6 were placed for sale and otherwise disbursed subject to a Common Interest
7 Development under a Declaration of Covenants, Conditions and Restrictions. On April
8 16, 1992, the CC&Rs for the Tar Springs Ranch were recorded with the San Luis
9 Obispo County recorders office.

10 Christine Loomis Drive runs for approximately 300 yards in a north/south
11 direction, and it provides access to defendants Mark Wels and Katie Wels' property by
12 going over two other properties, one belonging to plaintiffs Kevin Angell and Carrie
13 Angell, the other belonging to plaintiffs David Beaumont and Karri Beaumont. Each
14 plaintiff purchased their respective properties with notice of the recorded CC&Rs. The
15 dispute over use of this road arose in 1998 when the Wels attempted to obtain a building
16 permit from the county to build a single family home on one of their lots.

17 On March 1, 2010, a five-day jury trial began, involving 11 witnesses, to decide
18 whether the Wels had prescriptive rights to use Christine Loomis Drive. The jury
19 concluded that a 16-foot prescriptive easement exists in favor of the Wels.

20 On March 16, 2010, a three-day court trial began, involving 13 witnesses, to
21 decide the equitable issues related to use of the disputed roadway. Through this court
22 trial, the Wels seek an equitable modification of the prescriptive easement awarded by
23 the jury, an equitable easement by virtue of their need and based upon misconduct by
24 the Angells and Beaumonts, and an easement by virtue of the Tar Springs Ranch
25 CC&Rs. The Angells and Beaumonts resist those claims.

26 The Court has considered the testimony and exhibits, the briefs and arguments
27 of counsel, and the various responses to the Proposed Statement of Decision. This

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1 Statement of Decision will address each legal claim, seriatim, by stating the grounds
2 upon which the decision rests.¹

3 **DISCUSSION**

4 *A. Equitable Modification of Prescriptive Easement*

5 Prescriptive easements are disfavored under the law, and they are limited to the
6 uses actually shown during the prescriptive period. *Grant v. Ratliff* (2008) 164 Cal.
7 App. 4th 1304, 1310. The jury found that a 16-foot-wide access easement exists in
8 favor of the Wels over Christine Loomis Drive. The Court refused the Wels' request
9 for an instruction regarding a Cal Fire-compliant easement² because the scope of such
10 an easement needs to be *shown by use*, not by what past or current regulations may
11 allow. Hence, the Court concluded it would be both irrelevant and confusing to include
12 such an instruction.

13 With respect to a prescriptive easement, the Wels are entitled to receive what the
14 jury awarded them: an unimproved, 16-foot access for cars and SUVs. The Angells and
15 the Beaumonts will be ordered not to interfere with this easement in any way. The
16 Wels have authority to maintain the easement at 16 feet, but they do not have authority
17 to expand it, such as paving or widening the roadway, on the basis of modifying an
18 equitable easement. Further, there will be no embellishment by the Court.

19 *B. Equitable Easement*

20 With respect to an equitable easement, the first issue is whether something
21 known as an "equitable easement" is recognized under the law. *See, e.g., Donnell v.*
22 *Bisso Brothers* (1970) 10 Cal.App.3d 38 (suggesting that a court may use equitable
23 principles to create an easement where the standard bases for such an easement are

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25 ¹ A statement of decision need do no more than this. *Ermoian v. Desert Hosp.* (2007) 152
26 Cal.App.4th 475, 499-500 (citations omitted); *Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106,
27 1124-1125 (citations omitted). The document need not respond point by point to issues posed in a
28 request for a statement of decision. *Id.* Nor must it address all the legal and factual issues raised by the
parties. Rather, a statement of decision must fairly disclose the court's determination as to the ultimate
facts and material issues in the case, without necessarily specifying the particular evidence considered by
the trial court in reaching its decision. *Id.*

² Due to the steepness of the terrain, the risk of fire, and the need for speedy emergency vehicle
access, Cal Fire currently requires a 20-foot-wide, paved roadway for Christine Loomis Drive.

1 lacking); 6 Miller & Star, *Cal. Real Estate* (3d ed. 2000) § 15:46, pp. 153-155. [“A
2 court may create an easement on equitable grounds even though the user is not entitled
3 to an easement on one of the traditionally accepted grounds.”]; *Hirshfield v. Schwartz*
4 (2001) 91 Cal.App.4th 749, 765 (“[I]n a proper case, the courts may exercise their equity
5 powers to affirmatively fashion an interest in the owner’s land which will protect the
6 encroacher’s use.”); *Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259, 265 citing 13
7 Witkin, *Summary of Cal. Law* (10th. Ed 2005) Equity, Section 172, pp. 498-501.

8 Putting aside that a request for an equitable easement was not made in the
9 pleadings by the Wels, the burden of proof is on them to show entitlement to such an
10 easement. Having considered the trial evidence, the Court is not convinced, by a
11 preponderance of the evidence, that equity warrants a 20-foot Cal Fire-compliant
12 easement.

13 First, other access to the Wels property exists, although such access is more
14 problematic and more expensive to construct and maintain. Second, without affixing
15 particular blame, the Court notes that there were multiple incidents involving removal
16 and replacement of signage, bulldozing vegetation, escaping cows, cutting fences,
17 timber and brush, relocating gates, and other forms of frightening and intimidating
18 conduct. On these equitable issues fault exists on each side. The Wels have not proved
19 entitlement to any equitable easement by a preponderance of the evidence.

20 *B. Easement by Operation of the CC&Rs*

21 The most complicated question involves the road easement by virtue of the
22 CC&Rs. The Wels assert that Christine Loomis Drive, from which they claim to have
23 obtained historical access to their property, is a "Ranch Road" as defined in the CC&Rs,
24 and thereby entitles them to a road easement. Once again, it is the Wels’ burden to
25 prove that an easement exists by virtue of the CC&Rs.

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1 The specific provisions of the CC&Rs at issue are as follows:

2 2. Road easements

3 a. Each Parcel is entitled to take access from (1) the County Road or (2)
4 any of the existing Ranch roads (or paper roads shown on the Map to be)
5 contiguous to said Parcel (hereafter the "County Road" and the "Ranch Road").
6 Road locations may be revised and defined in the future pursuant to paragraph 9,
below.

7 9. Actual road locations may be different from the County Road and
8 paper roads shown on the Map. Existing road locations are more precisely
9 shown on the aerial topography photo on file with Vaughn Surveys. At such
10 time as a survey is completed by a licensed surveyor for one or more parcels, the
11 exact locations of the County Road and the Ranch Road shall be disclosed to all
Ranch lot owners. The Owners agree to cooperate in amending this Declaration
to reflect such road locations. . . .

12 In theory at least, the question is straightforward: "What constitutes a 'Ranch
13 Road' under paragraphs 2 and 9 of the CC&Rs?" Contrary to the Angells' and
14 Beaumonts' contention, however, the CC&Rs are ambiguous. More particularly,
15 ambiguities lie in paragraph 2(a), where the CC&Rs define the term "Ranch Road," and
16 in paragraph 9, where they go on to discuss actual ranch road locations in greater detail.

17 When ambiguity exists, the Court should consider extrinsic evidence in order to
18 ascertain the intentions the drafters of the CC&Rs. Civil Code § 1647; *Dore v. Arnold*
19 *Worldwide, Inc.*, (2006) 39 Cal.4th 384, 391 (holding that extrinsic evidence may be
20 used to interpret a written instrument, so long as the writing is "reasonably susceptible"
21 to the proposed meaning); *DVD Copy Control Ass'n, Inc. v. Kaleidescape, Inc.*, (2009)
22 176 Cal.App.4th 697, 712.

23 Looking at ease of administration, the interpretation put forward by the Angells
24 and Beaumonts -- and as espoused by Judge Hilton at trial -- is more logical. Access to
25 each Tar Springs Ranch parcel is specifically granted by only three road easements that
26 are identified and described in the CC&Rs. According to the Angells and Beaumonts,
27 these three road easement access points include the County road (denominated Huasna
28 Road), and the two paper roads that access the Ranch (Mary Hall Road and Tenadore

1 Canyon Road). These three roads are depicted on older as well as more modern maps,
2 including the 1896 Map referred to in the CC&Rs, and a 1994 survey performed by
3 Vaughn Surveys.

4 According to those surveys, either the County road, or one or the two "paper"
5 roads, touches all of the Tar Springs Ranch lots. Therefore, it would be a relatively
6 simple matter to limit each landowner's access to those three roads. As plaintiffs'
7 counsel has so forcefully advocated, such an interpretation would be more easily
8 comprehended by owners, as well as prospective purchasers and sellers, to the effect
9 that the transfer and exchange of real property in Tar Springs Ranch would be
10 facilitated.

11 Based on the evidence received at trial, however, the Court cannot conclude that
12 the simpler interpretation was the one envisioned by the drafters of the CC&Rs. The
13 interpretation put forward by the Wels -- and as espoused by Attorney Belsher at trial --
14 has more convincing force.

15 As stated, road easements are ambiguously defined in paragraph 2 of the
16 CC&Rs. Although the Angells and Beaumonts claim that only there are only *two* types
17 of Ranch Road (the County Road and two paper roads) this is not what the document
18 states, and it is not what the drafters intended.

19 As read in the context of the trial evidence, the Court interprets the phrase
20 "paper roads shown on the Map to be" to mean "paper roads shown on the Map *to be*
21 *ranch access roads*." In other words, the Court is persuaded that the phrase "existing
22 ranch roads" refers to something very different from the phrase "paper roads."

23 This interpretation of paragraph 2 is supported by paragraph 9, and other
24 evidence produced at trial. In addition to witness testimony, the two paper roads were
25 clearly shown on the 1896 Map, as well as on a 1994 survey performed by Vaughn
26 Surveys (Exhibit 90). Had these been the only types of Ranch Road, there would have
27 been no need to perform extensive overflight photography, or to produce an aerial

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1 topography photo, to show precise Ranch Road locations. Such a task would clearly
2 have been overkill.

3 Accordingly, there are three methods of parcel access: 1) "the County Road"
4 (also known as Huasna Road); 2) "any of the existing ranch roads"; **and**, 3) "paper
5 roads shown on the Map (i.e., the two ranch access roads denominated Mary Hall Road
6 and Tenadore Canyon Road)."

7 If the Ranch Road includes something more than the County road, and the paper
8 roads shown on both surveys to be ranch access roads, the question remains: "What are
9 those existing ranch roads?" The answer again comes from the trial evidence, in
10 conjunction with the CC&Rs: "existing ranch roads" means roads that were commonly
11 used by the Loomis family to traverse and access their property in the years leading up
12 to 1992, when the elder Loomises established their subdivision and signed the
13 declaration of CC&Rs. The trial evidence demonstrates that there are many such
14 existing on-the-ground roads, including Christine Loomis Drive.³

15 Certainly this rather fluid definition was somewhat Utopian and naïve,
16 especially in hindsight, given all the present difficulties. However, the evidence leaves
17 little doubt that this more convoluted interpretation is in accord with the intentions of
18 the elder Loomises. After all, these CC&Rs were designed by the Loomises to govern
19 future operations of family property, the same family that drew lots from a hat to
20 determine which children would get particular lots and parcels.

21 The elder Loomises wanted to ensure that all parcels had easy, reasonable
22 access, even if that access went across another relative's property; hence, their use of
23 the inclusive term "Ranch Road." Their idea was to include not only Mary Hall, and
24 Tenadore Canyon Roads as part of the "Ranch Road," but also to identify and include
25 other historical ranch roads, and to include them at a later date as Tar Springs Ranch
26 was more fully developed.

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28 ³ The Court need look no further than the testimony of attorney Belsher, although there is other
evidence showing the Loomis family's long-standing, historical use of the access road following almost
the same route now known Christine Loomis Drive.

1 Utilizing this process was intended to save the inordinate expense of surveying
2 the entire Ranch, and of locating all of the actual historic roads that traversed Tar
3 Springs Ranch until it made economic sense to do so. Unfortunately, the process has
4 backfired. One fundamental, unfulfilled premise of the CC&Rs was *accommodation*
5 *and compromise by the heirs* so that all of them would have not only reasonable but
6 easy access to their specific lots.

7 So that the "Ranch Road" definition was not indefinitely postponed, however,
8 the Loomises decided, as set forth in paragraph 9, to use an aerial topography photo to
9 document the historical road locations at a future date. However, Murphy's Law
10 intervened—surveyor Vaughn died in the course of his assignment (or shortly
11 afterwards), and it is unclear whether the overflight photographs that *do* exist were
12 eventually intended to supply the topography photo giving more precise existing road
13 locations.⁴ However, this unfortunate intervention is irrelevant: Christine Loomis
14 Drive nevertheless comes within the definition of "existing ranch roads."

15 With respect to witness credibility, the Court recognizes that attorney Belsher,
16 who not only drafted the CC&Rs, but also remains a friend of the Loomises and acted
17 as their counsel, is certainly interested in the outcome of this case. However, his long-
18 standing experiences on the Ranch, and his familiarity with multiple ranch roads, came
19 across as genuine and compelling. Further, his interpretation of the CC&Rs --which
20 were, after all, drafted by him--is a reasonable interpretation of an ambiguous
21 document. The Court finds his testimony to be credible.

22 Accordingly, Christine Loomis Drive is one of the ranch roads contemplated in
23 the CC&Rs. The Wels have an easement on this basis, as well as on the basis of the
24 prescriptive easement awarded by the jury.⁵

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27 4 Compromise and cooperation is also envisioned in paragraph 9. It is clear that the "exact
28 locations" of the "Ranch Road" have not yet been "disclosed to all Ranch lot owners", and that the
Owners have not yet cooperated in amending the CC&Rs to reflect additional road locations. Whether
such cooperation will ever come to pass remains to be seen.

5 The Court notes that the County of San Luis Obispo has recognized this easement, for
planning purposes, over a period of years.

1 As far as its scope, the easement consists of Cal Fire-compliant, legal access to
2 both of the Wels' lots. Reasonable access includes access for the purposes of
3 constructing all buildings, residences, and other structures that are permitted on the
4 properties based upon the County's planning and zoning ordinances. How this
5 eventually filters out will be somewhat dependent upon what Cal Fire and the County of
6 San Luis Obispo ultimately require for access to the parcels.

7 **CONCLUSION**

8 Although the Court's interpretation of the Tar Springs Ranch CC&Rs may lead
9 to uncertainty and further litigation, it was demonstrated at trial to be the method chosen
10 by the Loomis family, based on anticipated familial cooperation, to figure out
11 reasonable future lot access. In terms of fairness, moreover, anyone thinking of
12 purchasing property, and who reads the Tar Springs Ranch CC&Rs, would be on notice
13 of the need to investigate the matter of the "Ranch Road" in far greater detail.

14 Going forward, it would seem to be in the best interests of all of the lot owners
15 either to amend the CC&Rs or to determine the Ranch Road issue once and for all, so as
16 to promote certainty in future property transactions. However, this issue needs to be
17 addressed in the first instance by the Tar Springs Ranch community, not by the Court.

18 Counsel for the Wels should prepare the form of the judgment and submit it to
19 opposing counsel within 10 days. The parties should meet and confer regarding an
20 appropriate form of judgment, as well as any objections thereto. Any disputes will be
21 discussed at a hearing on September 2, 2010. Assuming a dispute exists as to the
22 precise location of the easement, the Court will consider appointing an independent
23 expert and to assess the expert's fees as a taxable cost. No further pleadings should be
24 submitted without leave of Court.

25 DATED: July 23, 2010

_____/s/_____
CHARLES S. CRANDALL
Judge of the Superior Court

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